



Federal Communications Commission
Washington, D.C. 20554

AUG 14 1997

96-18

The Honorable Don Nickles
United States Senator
409 South Boston, Suite 3310
Tulsa, Oklahoma 74103-4007

Dear Senator Nickles:

Thank you for your letter of May 28, 1997, on behalf of your constituent, Lee P. Andrews, regarding the Commission's policies with regard to licensing of 931 MHz paging systems. Mr. Andrews expresses concern that his paging application will be dismissed and that paging frequencies will be awarded in a competitive bidding process.

The Commission is not retroactively dismissing pending applications. In fact, the Commission has taken several steps to allow site-by-site licensing to continue during the rulemaking process. Initially, when the Notice of Proposed Rulemaking was adopted on February 8, 1996, the Commission imposed a freeze on new applications for proposing geographic area licensing for exclusively licensed paging channels, including 931 MHz channels. The freeze was imposed for two reasons: (1) accepting new applications after releasing the Notice would impair the objectives of the proceeding, and (2) many speculation paging applications had been filed recently with the Commission, causing a substantial backlog of applications and delaying the processing of legitimate applications. All pending applications (*i.e.*, applications filed with the Commission by February 8, 1996) were processed under our then-existing rules. The Commission also sought comment from the public regarding appropriate interim licensing options during the rulemaking proceeding.

Based on the comments that were filed regarding interim licensing, the Commission subsequently partially lifted the freeze and allowed paging licensees to file for expansion sites within 40 miles of an operating site. Thus, site-by-site licensing continued for incumbent licensees seeking to expand their systems. A Public Notice was released advising that all such expansion applications filed on or before July 31, 1996 would be processed, and that applications filed after July 31, 1996 might not be processed.

On February 20, 1997, the Commission released a Second Report and Order and Further Notice of Proposed Rule Making that adopted rules governing geographic area licensing for paging licenses and established competitive bidding procedures for those systems. Specifically, the Commission determined that all mutually exclusive applications for non-nationwide common carrier paging licenses and exclusive non-nationwide private carrier paging channels would be subject to competitive bidding procedures. The Commission also decided to dismiss all applications filed after July 31, 1996 and all pending mutually exclusive applications which could not be resolved under our pre-existing rules.

The Commission has imposed similar freezes in a number of other proceedings to facilitate the transition to geographic licensing and auctions, including Multipoint Distribution Service, 800 and 900 MHz Specialized Mobile Radio (SMR) Service, Location and Monitoring Service, 220 MHz Service and 39 GHz Service. Our decision in these proceedings to suspend acceptance of applications while the related rulemaking was pending advances two critical goals -- preservation of our ability to assign licenses through auctions, and deterrence of license fraud and speculation. In particular, we are concerned that the potential benefits of geographic area licensing, with competitive bidding used to select from among competing applicants, would be undermined by continuing to invite site-specific applications for "free" spectrum on a first-come, first-served basis. Similarly, the Commission's decision to dismiss pending mutually exclusive applications and post-July 31, 1996 applications is well within its authority and does not constitute retroactive action.

Assigning frequencies by auction helps deter fraud and speculation and ensures that this valuable public resource is assigned rapidly and efficiently to the parties who value it the most, rather than given away to the first party who files its application with the Commission. The Commission has stated its belief in other contexts (such as SMR) that auctions will minimize administrative or judicial delays in licensing, particularly in comparison to other licensing methods such as comparative hearings, lotteries (which are specifically prohibited by the statute if the service is auctionable), or "first-come, first-served" procedures.

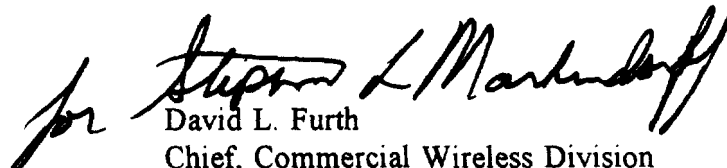
The Commission's newly adopted rules to auction paging frequencies is consistent with Section 309(j) of the Communications Act, which sets forth certain criteria for determining when auctions should be used to award spectrum licenses. Pursuant to these criteria, auctions are to be used to award mutually exclusive initial licenses or construction permits for services likely to involve the licensee receiving compensation from subscribers. The statute also requires that the Commission determine that auctioning the spectrum will further the public interest objectives of Section 309(j)(3) by promoting rapid development of service, fostering competition, recovering a portion of the value of the spectrum for the public, and encouraging efficient spectrum use.

Moreover, the Commission has taken a number of steps to ensure that paging providers that are small businesses are not adversely affected by the transition to geographic area licensing and the use of competitive bidding procedures to award paging licenses. We are establishing licensing areas of a size that will provide realistic bidding opportunities for small and medium-sized operators. We have also adopted special provisions in our competitive bidding rules for small businesses to facilitate their participation in the auction process. In the Further Notice of Proposed Rule Making, we have proposed to allow paging licensees to partition their licensing areas in order to promote quicker build-out of small markets and rural areas.

These facts regarding the rulemaking proceeding and interim licensing are a matter of public record in the Commission's rules, orders, and public notices. If Mr. Andrews used an application preparation service and was not advised of these facts, he could be a victim of a fraudulent application investment scheme. The Commission, the United States Securities and Exchange Commission and the Federal Trade Commission are investigating fraudulent investment schemes involving paging and other wireless services. Generally, the perpetrators target unsophisticated investors and represent that paging licenses have a great value that can be recouped through subsequent sale. Investors also may be deceived or unaware of the obligations with which licensees must comply. Unfortunately, investors who are induced to file applications are often targeted a second time by different fraud perpetrators offering to construct the paging system. The FCC Call Center, 1-888-CALL-FCC (225-5322), will forward data from telemarketing fraud victims to the National Fraud Information Center where it is made available to law enforcement personnel on a nationwide basis. We strongly recommend that Mr. Andrews call the FCC Call Center and provide the Call Center representative with information pertaining to the paging application investment. Additionally, Mr. Andrews may also wish to promptly contact his State Commission, State Attorney General or the National Fraud center directly at 1-800-876-7060.

Thank you for your inquiry.

Sincerely,


David L. Furth
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

CONGRESSIONAL
referral to headquarters

PRB
pr. paging
4061

DATE: June 2, 1997

TO: Samantha Peoples, Mail Stop 1500

FM: Dallas, Texas

Member of Congress: Senator Don Nickles

Subject: 931 MHz Paging Applications / Auctions

The attached correspondence raises policy issues which are so novel that the field does not have current information and cannot obtain a Commission policy statement or response to these issues is expressly reserved for CIB headquarters or another bureau.

Lawrence R. Brock

Lawrence R. Brock

Acting District Director

Date recd by OBC 6/5/97

Date dlvr'd to OLA 6/5/97

Initials: *LB*



**FEDERAL COMMUNICATIONS COMMISSION
COMPLIANCE & INFORMATION BUREAU**

June 2, 1997

Reply To:

9330 LBJ Freeway, Suite 1170
Dallas, Texas 75243
(214) 235-3369
CD-97-38

Honorable Don Nickles
United States Senate
409 South Boston, Suite 3310
Tulsa, OK 74103-4007

Dear Senator Nickles:

Thank you for contacting our office on behalf of your constituent, Lee P. Andrews, of Tulsa, Oklahoma.

Your inquiry is being forwarded to the Chief of the Compliance and Information Bureau for coordination with the appropriate staff at our headquarters office in Washington, D.C.

Sincerely,

A handwritten signature in cursive script, which appears to read "Lawrence R. Brock", is written above the printed name.

Lawrence R. Brock
Acting District Director

:ew

DON NICKLES
OKLAHOMA

United States Senate
WASHINGTON, DC 20510-3602

COMMITTEES
FINANCE
ENERGY AND NATURAL
RESOURCES
BUDGET
GOVERNMENTAL AFFAIRS
RULES AND ADMINISTRATION

May 28, 1997

RECEIVED

JUN 02 1997

F.C.C. Dallas

Sandra Morris, Congressional Liaison
Federal Communication Commission
9330 LBJ Freeway, Suite 1170
Dallas, Texas 75243

Dear Sandra:

Attached is a letter from one of my constituents concerning a situation in which I believe you can be of assistance.

I would appreciate your looking into this matter for me. In responding to me, please direct your correspondence to the attention of my representative:

Julie Clardy, Constituent Representative
409 South Boston, Suite 3310
Tulsa, Ok 74103-4007

Thank you very much for your cooperation.

Sincerely,



DON NICKLES
U.S. SENATOR

DN/jc
enc

19 MARCH 97

REC'D MAR 21 1997

9529 E. 98th Street
Tulsa, OK 74133

Mr. Don Nickles
U. S. Senator
409 S. Boston
Tulsa, OK 74103

Dear Mr. Nickles:

I am currently an applicant for a 931 MHz paging license in the Indianapolis, IN market, which application is currently pending before the Federal Communications Commission(FCC). I am writing to urge you to insist that the FCC reverse its February 24, 1997 decision in WT Docket No. 96-18 looking to dismiss my pending application and issue 931 MHz paging licenses in my market solely by auctions in the future.


I paid thousands of dollars for application preparation and filing services and properly filed my application in accordance with the FCC Rules and policies then in effect at the time of filing. The fact that the FCC now wants to change its rules, dismiss my application and hold an auction means that the substantial amount of money I invested in this project will be lost. Neither I nor many other similarly situated applicants who properly filed in good faith have the resources to bid hundreds of thousands of dollars to win an auction license for an entire, big as a state-sized MTA geographic area, as proposed by the FCC.

I will have no opportunity to obtain an FCC license, build a paging station and participate in the communications industry as I hoped to do, and which Congress has committed to seeing happen. I will lose all of my substantial investment to date because the FCC wants to arbitrarily change its Rules after I filed my application. This retroactive action by this Federal agency is not fair, and should not be condoned by Congress. Congress has oversight of this Federal agency and the FCC should be held accountable.

I urge you to conduct an inquiry and take appropriate action on behalf of your constituents and have the FCC correct its action before it is too late. All I am asking is equitable treatment, which in this case could include "grandfathering" of mine and similar applications by the FCC, and appropriate processing and grant of these applications. Such would not interfere with future auctions, as planned by the FCC.

Thank you for your prompt evaluation and intervention on my behalf.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Lee P. Andrews", written in a cursive style.

Lee P. Andrews

cc: Commercial Wireless Division
Dockets

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